

**MINUTES OF THE GOVERNING BOARD  
OF THE MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT  
VICTORVILLE, CALIFORNIA**

**AGENDA ITEM 8**

**DATE:** September 26, 2011

**CONTINUED TO OCTOBER 24, 2011**

**RECOMMENDATION:** 1. Conduct a public hearing to consider the adoption of Rule 315 – *Federal Clean Air Act Section 185 Penalty*; 2. Continue hearing to October 24, 2011.

**SUMMARY:** The proposed amendment of Rule 315 is necessary to implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the United States Environmental Protection Agency (USEPA) as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy. Continuation is necessary to address substantive comments by USEPA and California Air Resources Board (CARB) staff.

**CONFLICT OF INTEREST:** None

**BACKGROUND:** The Mojave Desert Air Quality Management District (MDAQMD) originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 28, 2011. The MDAQMD submitted Rule 315 to the California Air Resources Board (CARB) on March 31, 2011 requesting inclusion in the State Implementation Plan (SIP), and CARB submitted Rule 315 to the United States Environmental Protection Agency (USEPA) on April 22, 2011 as a revision to the State Implementation Plan (SIP). USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the Federal Implementation Plan (FIP) clock. The MDAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions as well as a FIP.

Rule 315 was adopted to implement a mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the MDAQMD portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA). 42 U.S.C. 7511d (Federal Clean Air Act Section 185, or Section 185) requires the imposition of a penalty of \$5,000 per ton (adjusted for inflation) on major facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. A portion of the jurisdiction of the MDAQMD is located within the AQMA

Cc: Tracy Walters

I, MICHELE BAIRD, CLERK OF THE GOVERNING BOARD OF  
MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT  
DISTRICT, HEREBY CERTIFY THE FOREGOING TO BE A  
FULL, TRUE AND CORRECT COPY OF THE RECORD OF  
THE ACTION AS THE SAME APPEARS IN THE OFFICIAL  
MINUTES OF SAID GOVERNING BOARD MEETING  
\_\_\_\_\_  
CLERK OF THE BOARD  
MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT



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which failed to meet the one-hour ozone standard on or before 2007. Therefore, this portion of the MDAQMD is subject to the provisions of Section 185. The remainder of the MDAQMD is not located within the AQMA and is not subject to the provisions of Section 185. The USEPA made a finding of a failure to submit a rule implementing the penalty provisions of Section 185 on January 5, 2010 (75 FR 232) which started a SIP 18 month sanction clock. Potential sanctions include an increase in the new source review offset ratio and suspension of federal highway transportation funding. Rule 315 was designed to implement the provisions of Section 185 and to stop the sanction clock upon approval of the submission by USEPA. The submission of Rule 315 was found to be complete by USEPA, which stopped the sanction clock, but not the FIP clock. Under a FIP, USEPA, not the state, determines what steps must be taken to implement Section 185. For the FIP clock to be turned off, USEPA must approve the SIP within 24 months of publishing the finding of the rule as not approvable.

The MDAQMD is now amending Rule 315 to include a non-attainment area fee equivalency strategy, as provided by Section 172(e) of the Federal Clean Air Act. Section 172(e) allows for alternative programs that are no less stringent than the mandated Section 185 program. Under USEPA guidance, such programs may be either "fee equivalent" or "emissions equivalent" or a combination of both strategies. This rule amendment proposes a "fee equivalent" program which will recognize funding from fee programs that are surplus to the SIP and are used for air quality improvement projects in the MDAQMD. USEPA guidance requires fees collected under such program be directed towards the reduction of Oxides of Nitrogen (NO<sub>x</sub>) or Volatile Organic Compounds (VOC) emissions. Such funds will be accumulated into a fee equivalency "tracking account" and used to offset the burden otherwise required under the Section 185 penalty collection approach. This "fee equivalency" approach must be used to facilitate pollution reduction efforts, whereas the Federal Clean Air Act does not specify how Section 185 penalty revenues are to be used. Therefore, this "fee equivalent" strategy will have a greater potential for an air quality benefit than the Section 185 penalty.

A Notice of Exemption, Categorical Exemption (Class 8; 14 Cal. Code Reg. §15308) will be prepared by the MDAQMD for the amendment of Rule 315 pursuant to the requirements of CEQA.

**REASON FOR RECOMMENDATION:** Health & Safety Code §§40702 and 40703 require the Governing Board to hold a public hearing before adopting rules and regulations. Also, 42 U.S.C. §7410(l) (FCAA §110(l)) requires that all SIP revisions be adopted after public notice and hearing. Continuation is necessary to address substantive comments by United States Environmental Protection Agency (USEPA) and California Air Resources Board (CARB) staff.

**REVIEW BY OTHERS:** This item was reviewed by Karen Nowak, District Counsel as to legal form and by Eldon Heaston, Executive Director on or before September 13, 2011.

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**FINANCIAL DATA:** No increase in appropriation is anticipated.

**PRESENTER:** Alan De Salvio, Supervising Air Quality Engineer